IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 659 OF 2007

Jagannath C. Shetty ....Petitioner.
V/s
State of Maharashtra & Ors.... ....Respondents.

Mr.R.D.Soni with Mr.Gawade i/by M/s.R.D.Soni & Co. for the petitioner.

Mr.A.H.Palekar, AGP for respondents 1 to 4.

CORAM: A.P.DESHPANDE, J.
31/7/07

PC:

Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

The petitioner carries on business in the name and style of Shailaja Bar & Restaurant at Kalyan, district Thane. The petitioner was possessing requisite eating house licence besides the licence under the Shop & Establishment so also police licence for running the said bar and restaurant. The petitioner was holding a dance bar licence prior to imposition of ban by the State Government under the Rules for Licensing and Controlling of places of Public Amusement (other than cinema) and performance for Public Amusement, including Melas and Tamasha, 1960. When the petitioner was holding the liecence for dance bar action was taken against the petitioner in the year 2001, 2002, 2003 and 2004 under which licence was suspended for a limited period for few days. The suspension of licence was on account of breach of rules for keeping the place of amusement open after cut off time. Sometime in the year 2005 the State Government imposed ban on dance bars and hence the petitioner applied for licence authorizing him to conduct orchestra at the

same place i.e. Hotel Shailaja Bar & Restaurant. The licence was issued on 28.12.2005.

2. After issuance of show cause notice the impugned order has been passed by the Commissioner of Police on 7.8.06 wherein it is stated that the petitioner's licence for playing orchestra was valid upto 31.12.05 and an application was made for renewal of the licence 31.12.06. The application for renewal of licence has been rejected by the impugned order for the reason that the petitioner had misused the licence during the period of 2001 to 2004 and that there was every possibility of petitioner misusing the same if and in case licence was renewed. Aggrieved by the impugned order passed by the Commissioner of Police dated 7.8.06 the petitioner filed an appeal before the State Government. The Minister concerned being in agreement with the view taken by Licensing Authority has dismissed the appeal and confirmed the order. Aggrieved thereby the petitioner has filed the present writ petition. Two fold submissions are made by the learned counsel for the petitioner; one that as the petitioner was granted licecne on 28.12.05 violations of rules by the petitioner prior thereto ought not to have been considered and the respondents cannot rely upon the earlier breaches which were committed prior to the date of grant of licence and two that the earlier licence of which the breach has been committed by the petitioner was for conducting dance bar whereas the present licence is one for orchestra. As the two licences are separate the incidents of breach of earlier licence would not be relevant while considering renewal of licence of orchestra. The learned counsel appearing for the petitioner has relied upon a judgment rendered by a learned Single Judge of this Court dated 15.1.99 in Writ Petition No.102/99. Perusal of the said judgment reveals that the learned single judge has held that despite commission of prior offence if licence has been granted/renewed then the earlier offences or breaches

cannot be taken into consideration while renewing the licence thereafter. There are other judgments as well on which reliance has been placed which take the same view. Learned Additional Government Pleader for the respondents invited my attention to the affidavit filed in reply and has contended that as the petitioner has been committing offences/breaches of rules continuously from 2001 onwards the decision to refuse renewal is justified.

3. The petitioner has filed an undertaking before this Court dated 7.7.2007 wherein it is stated that the petitioner assures this Court that upon renewal of licence the petitioner undertakes to abide by the conditions of licence while carrying on business. Further statement is made that after grant of licence on 26.12.05 no offence has been registered against the petitioner. In the result writ petition deserves to be allowed. The impugned orders passed by the Commissioner of Police and the State Government impugned in this writ petition are quashed and set aside. The Commissioner of Police is directed to consider the application moved by the petitioner for renewal of licence and take a decision in accordance with law within a period of four weeks from today without taking into consideration the registration of offences prior to grant of licence i.e.28.12.2005. Rule made absolute in above terms.

31.7.07